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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 UNITED STATES OF AMERICA,
11 Plaintiff,
12 v.
13 AMANDO VILLARREAL HEREDIA (1),
14 Defendant.

10cr3044WQH

ORDER

HAYES, Judge:

15 The matter before the Court is the order denying Defendant's motion for a
16 sentence reduction under 18 U.S.C. § 3582(c)(2) on remand from the United States
17 Court of Appeals for the Ninth Circuit. (ECF No. 2396).

18 **FACTUAL BACKGROUND**

19 On March 12, 2018, the United States Court of Appeals for the Ninth Circuit
20 remanded this case for the Court to "reconsider its quantity determination in light of
21 *Mercado-Moreno* [and] determine whether it is more likely than not that Heredia is
22 responsible for the new quantity threshold of 4.5 kilograms of actual methamphetamine
23 or 45 kilograms of methamphetamine mixture . . . and assess Heredia's eligibility for
24 a sentencing reduction accordingly." (ECF No. 2396). The Court ordered further
25 briefing. (ECF No. 2395).

26 On April 4, 2018, Plaintiff United States filed a supplemental response in
27 opposition to Defendant's motion for reduction of sentence under 18 U.S.C. §
28 3582(c)(2). Plaintiff United States asserts that the facts admitted by the Defendant in

1 the plea agreement and the uncontested facts in the Presentence Report establish that
2 Defendant exercised direct control and supervision over the entirety of the drug
3 distribution of the RICO conspiracy and narcotics distribution conspiracy charged by
4 the grand jury in this case. Plaintiff United States contends that the conspiracy was
5 responsible for more than 45 kilograms of methamphetamine mixture and Defendant
6 is not eligible for a sentence reduction under Amendment 782.

7 On June 27, 2018, Defendant filed a reply to the Government's supplemental
8 response in opposition to Defendant's motion to reduction of sentence under 18 U.S.C.
9 § 3582(c)(2). Defendant asserts that the application of more than "1.5 kilograms of
10 actual methamphetamine" in his case undermine the purpose of the plea bargaining.
11 (Plea Agreement, ECF No. 2041 at 7.).

12 **RULING OF THE COURT**

13 Defendant agreed in the factual basis of his plea agreement that he "acted as an
14 organizer and leader in the charged methamphetamine importation and distribution
15 conspiracy, an offense which involved five or more participants." (ECF No. 2041 at 7).
16 Defendant agreed that he "knew that members of the FSO would, during the time frame
17 of the above-noted conspiracy, import and distribute more than 1.5 kilograms of actual
18 methamphetamine." *Id.* At the time of the sentencing in this case, the Guidelines
19 required only a finding of 1.5 kilograms of actual methamphetamine to trigger the
20 maximum base offense level.

21 At sentencing, the Court made the following findings,

22 With respect to the Advisory Sentencing Guidelines, the Court does find
23 with respect to the methamphetamine importation distribution conspiracy
24 that the base offense level is a 38 pursuant to Section 2D1.1(c)(1).
Importation of methamphetamine, plus two, pursuant to Section
2D1.1(b)(5).

25 There is a plus four for the role, aggravated role, pursuant to Section
26 3B1.1(a). The adjusted offense level is 44. And then under the murder
27 conspiracy, it starts at a 33, pursuant to Section 2A1.5, plus four for the
28 role, pursuant to Section 3B1.1(a), which is an adjusted offense level 37.
That results in the base offense level of 44. It only scores half a point.

There is a three-level reduction for acceptance of responsibility. Total
offense level is 41. Mr. Villareal has one criminal history point from a

1 Health and Safety Code conviction in 1999 at the time he was 21.

2 . . . -- that places him in a Criminal History Category 1. The guideline
3 range is 324 to 405 months.

4 Under the 3553 factors, the nature and circumstances of the offense are
5 aggravated. It is really hard to come up with a situation, a drug case, that
6 can be more aggravated than this one. Certainly this is a gentleman whose
7 role was significant. He was a leader or organizer. He qualified – clearly
8 qualifies for an aggravated role.

9 In addition to significant amounts of dangerous narcotics, the defendant
10 was involved in a conspiracy to commit murder. It is hard to imagine what
11 is worse than using violence to engage and further the activities of a
12 significant drug trafficking organization.

13 It does appear certainly from the presentence report that this is an
14 individual who's been involved in the drug business for an extended period
15 of time. He's approximately 35 years of age. There is really not even a real
16 suggestion in the presentence report that he's been involved in any legal
17 employment, other than the drug business -- any legal employment at all,
18 really in his life.

19 And it does appear that his life really had been dedicated to furthering the
20 activities of this drug conspiracy or others. He's been involved in it
21 basically, it looks like, his whole life, and it has been a significant amount
22 of drugs have been distributed, and they've used threats of violence and
23 actual violence in order to further the ends of the drug trafficking
24 organization.

25 So it is hard to come up with anything that is a case that would be more
26 aggravated than this, and certainly this – Mr. Heredia's role is a significant
27 one, and that is why he qualifies for the aggravated role adjustment . . . ,
28 he is here because of his participation in a massive drug conspiracy that
was violent.

The need for the sentence to reflect the seriousness of the offense, promote
respect for the law, and provide just punishment, as the parties have
indicated -- both lawyers have indicated that they have -- they are
recommending a sentence of 360 months in custody, which is a significant
sentence by anybody's definition. It is a recommendation that I'll follow.
I think it is a reasonable one.

(ECF No. 2177 at 13-14). The Court entered judgment imposing a term of
imprisonment of 360 months on the RICO conspiracy count and the narcotics
distribution count to be served concurrently in addition to a 5 year term of supervised
release on each count. (ECF No. 2068).

On December 28, 2015, this Court entered an order denying Defendant's request
for resentencing under Amendment 782 to the United States Sentencing Guidelines.
The order stated,

1 Defendant requests resentencing under the United States Sentencing
2 Guidelines as amended on November 1, 2014. Defendant contends that
3 his base offense level of 38 at the time of sentencing was based upon
4 distribution of more than 1.5 kilograms of actual methamphetamine.
5 Defendant contends that the new amendments to the United States
6 Sentencing Guidelines result in a base offense level of 36 for an offense
7 level involving 1.5 kilograms of actual methamphetamine.

8 The Government opposes any reduction in Defendant's sentence pursuant
9 to the November 1, 2014 amendments to the United States Sentencing
10 Guidelines. The Government contends that the base offense level remains
11 at 38 under the 2014 amendments to the Sentencing Guidelines. The
12 Government further asserts that the Court should exercise its discretion
13 and deny any reduction in this case, even if the 2014 amendment changed
14 the applicable base offense level.

15 In the Plea Agreement the admitted factual basis provided in part:

16 Given his personal participation in the affairs of the FSO,
17 defendant Armando Villareal Heredia knew that members of
18 the FSO would, during the time frame of the above-noted
19 conspiracy, import and distribute more than 1.5 kilograms of
20 actual methamphetamine. . . .

21 Defendant Armando Villareal Heredia acted as an organizer
22 and leader in the charged RICO conspiracy, an offense which
23 involved more than five participants. Defendant Armando
24 Villareal Heredia also acted as an organizer and leader in the
25 charged methamphetamine importation and distribution
26 conspiracy, an offense which involved five or more
27 participants.

28 (ECF No. 2041 at 7). The stipulated facts in the plea agreement state that
Defendant was the "an organizer and leader" in a conspiracy involving
more than five participants and the uncontested facts in the pre sentence
report established that "[d]uring the course of the investigation, agents
seized at least 100 pounds of methamphetamine, 2,765 pounds of cocaine,
40,300 pounds of marijuana and more than one dozen firearms." (ECF
No. 2014 at 7; ECF No. 2048 at 9).

Amendment 782 to the United States Sentencing Guidelines, effective
November 1, 2014, lowered the penalties for drug offenses by reducing the
offense level in the § 2D1.1 Drug Quantity Table by two levels. The
Amended Guidelines require that a base offense level of 38 requires an
offense involving 45 kilograms or more of methamphetamine or 4.5
kilograms of actual methamphetamine. In this case, the uncontested drug
quantities seized during the narcotics distribution conspiracy for which
Defendant acted as an organizer and a leader involved "at least 100 pounds
of methamphetamine" which is more than 45 kilograms of
methamphetamine. The Court concludes that the base offense level under
the uncontested drug quantities seized during the narcotics distribution
conspiracy for which Defendant acted as an organizer and a leader remains
a level 38. The Court concludes that Defendant is not entitled to
resentencing under Amendment 782.

ECF No. 2264 at 5-6.

1 In remanding this case, the Court of Appeals stated:

2 Heredia contends that he is eligible for a sentence reduction under
3 Amendment 782, which increased the quantity of actual methamphetamine
4 required to trigger the maximum base offense level from 1.5 kilograms to
5 4.5 kilograms. See U.S.S.G. § 2D1.1(c)(1) (2014). He argues that he no
6 longer qualifies for the maximum level because he admitted to conspiring
7 to distribute only 1.5 kilograms. Contrary to this contention, the plea
8 agreement reflects that Heredia admitted to conspiring to distribute “more
9 than 1.5 kilograms of actual methamphetamine.” The district court did not
10 need to, and did not, make a more specific quantity determination at
11 sentencing. Under these circumstances, the district court properly
12 attempted to determine the total drug quantity attributable to Heredia in
13 order to determine his eligibility for a sentence reduction. See *United*
14 *States v. Mercado-Moreno*, 869 F.3d 942, 957-58 (9th Cir. 2017).

15 *Id.* In *United States v. Mercado-Moreno*, 869 F.3d 942 (9th Cir. 2017), the Court of
16 Appeals held that “a district court in § 3582(c)(2) proceedings may make supplemental
17 findings of drug quantity if they are necessary to determine the defendant's eligibility
18 for a sentence reduction in light of a retroactive Guidelines amendment.” *Id.* at 953-
19 954. The Court of Appeals stated, “In those cases where a sentencing court's quantity
20 finding is ambiguous or incomplete, a district court may need to identify the quantity
21 attributable to the defendant with more precision to compare it against the revised drug
22 quantity threshold under the relevant Guidelines amendment. . . .[D]istrict courts in §
23 3582(c)(2) proceedings may make additional findings on the drug quantity attributable
24 to a defendant if those findings are necessary to determine the defendant's eligibility for
25 a sentence reduction. Such findings must be supported by the record and cannot
26 contradict any findings made by the original sentencing court.” *Id.* at 954-55.

27 Having fully considered the facts admitted by the Defendant in the Plea
28 Agreement and the uncontested fact in the Presentence Report, the Court makes the
supplemental finding that Defendant exercised direct control and supervision over the
entirety of the drug distribution of the RICO conspiracy and narcotics distribution
conspiracy charged by the grand jury in this case and that the Defendant was
responsible for more than 45 kilograms of methamphetamine mixture. The stipulated
facts in the plea agreement state that Defendant was the “an organizer and leader” in a
conspiracy involving more than five participants and the uncontested facts in the pre

1 sentence report established that “[d]uring the course of the investigation, agents seized
2 at least 100 pounds of methamphetamine, 2,765 pounds of cocaine, 40,300 pounds of
3 marijuana and more than one dozen firearms.” (ECF No. 2014 at 7; ECF No. 2048 at
4 9). This is relevant conduct that must be considered in determining whether Defendant
5 is eligible for a sentencing reduction in light of Amendment 782. The Court finds that
6 Defendant personally “counseled, commanded, induced, procured, or willfully caused”
7 the distribution of more than 45 kilograms of methamphetamine mixture during the
8 course of the conspiracy. U.S.S.G. § 1B1.3, cmt. n.2 (2014). This finding is necessary
9 for this Court to determine whether Defendant is entitled to a sentence reduction under
10 Amendment 782 of the Sentencing Guidelines and does not contradict any findings
11 made by this Court in the sentencing hearing.¹

12 Based upon the supplemental finding, the Court concludes that Defendant is not
13 eligible for a sentence reduction under Amendment 782. Defendant’s motion for a
14 sentence reduction under 18 U.S.C. § 3582(c)(2) is denied.

15 DATED: August 7, 2018

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17 **WILLIAM Q. HAYES**
18 United States District Judge
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27 ¹ Even if Amendment 782 resulted in a change to the applicable base offense
28 level, the Court would exercise its discretion to not lower the Defendant’s sentence
based upon the Defendant’s aggravated role in the offenses stated at the time of
sentencing. (ECF No. 2177 at 13-14).